

TITLE 329 SOLID WASTE MANAGEMENT BOARD

#01-288(SWMB)

SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND PUBLIC COMMENT PERIOD

The Indiana Department of Environmental Management (IDEM) requested public comment from July 1, 2002, through August 1, 2002, on IDEM's draft rule language. IDEM received comment from the following parties:

Dan B. Magoun, National Solid Waste Management Association (NSWMA)

Mark E. Shere, Bethlehem Steel Corporation (BSC)

Vincent L. Griffin, Indiana Chamber of Commerce (ICC)

Following is a summary of the comments received and IDEM's responses thereto.

Comment: This comment refers to 329 IAC 10-2-12(b), 329 IAC 10-2-72-1(b), 329 IAC 10-2-73(b), 329 IAC 10-2-85(b), 329 IAC 10-2-99.3(b), and 329 IAC 10-2-175(b). The proposed draft rule has numerous double definitions for the same term depending on if one is referring to a municipal solid waste landfill or a non-municipal solid waste landfill (MSWLF), construction/demolition site, or a restrictive waste site (e.g., 329 IAC 10-2-12, definition of aquifer; 329 IAC 10-2-63, definition of dwelling). There is no explanation why two definitions are provided. Having two different definitions for the same term creates serious confusion and could lead to inappropriate application and misuse. One definition should be utilized. (NSWMA) The proposed new definition in 329 IAC 10-2-63(b) is more restrictive than the existing definition in 329 IAC 10-2-63(a) when used in conjunction with the setback requirements in 329 IAC 10-25 and 329 IAC 10-33. Why would the setback from a dwelling for non-municipal solid waste facilities be more stringent than for a MSWLF? (NSWMA) 329 IAC 10-2-105.6 is a new definition. It is more appropriate to propose this new definition in the revision to 329 IAC 10 (LSA Document # 00-185). (NSWMA) 329 IAC 10-2-140(b): If (b) was intended to be exactly the same as (a) except for its application, then need to delete "means the original" and replace with "most recently submitted" to be consistent (which is the way it should read anyway). (NSWMA)

Response: P.L. 218 -2001 requires the board to adopt rules that reflect the repeal of references to "special waste." Because 329 IAC 10-2.5-1 contains a definition of special waste, it was included in the draft rule. Comments received on the draft rule indicated that moving existing definitions from 329 IAC 10-2.5-1 to 329 IAC 10-2 would result in confusion by creating different definitions for the same terms. Therefore, we are proposing to remove 329 IAC 10-2.5-1 from this rulemaking. The result of this action would be to retain 329 IAC 10-2.5-1 in its present form, including the definition of "special waste." That definition has no practical effect as a result of P.L. 138-2000. We will remove that definition in future rulemaking dealing with restricted waste sites, nonmunicipal solid waste landfills, and construction/demolition sites.

Comment: The words "revised as of July 1, 2001" in 329 IAC 10-2-29.5(2) should be deleted to eliminate future impacts on this rule by a new revision of 40 CFR 261.5. (NSWMA)

Response: This phrase establishes a "date certain" for material referenced in the rule as required

by the Attorney General under IC 4-22-2-21, IC 4-22-2-32, and IC 4-22-2-42. If this date was eliminated, future amendments could take effect without action by the board. Such prospective regulation is prohibited by Indiana law. This date ensures that only amendments adopted by the board under IC 4-22-2 and IC 13-14-9 are included in the rules.

Comment: The reference to “special waste” in 329 IAC 10-2-32 should be deleted. (NSWMA)

Response: 329 IAC 10-2-32 is included in this rule in Section 4, where the term “special waste” has been replaced with “industrial process waste.”

Comment: 329 IAC 10-2-174 is a new definition and is inconsistent in what is being proposed in the revision to 329 IAC 10 (LSA Document #00-185). In addition, there is a duplication in (b)(6) and (12). Residential and household wastes are the same. What is non-residential waste? Isn't non-residential waste the rest of the list in (b)? (NSWMA)

Response: 329 IAC 10-2-174 is an existing definition. However, as currently written, this definition conflicts with the statutory definition of “solid waste” at IC 13-11-2-205. Because such a conflict is grounds for disapproval of the rule, the definition has been rewritten to be consistent with the statutory definition. The list of wastes retained in this definition clarifies the term “other discarded material.”

Household waste and residential waste are defined at 329 IAC 10-2-90 and 329 IAC 10-2-156, respectively. Since both terms are used in Article 10, both terms have been retained.

The existing term “nonresidential waste” has been removed because it is not defined in Article 10 and is only used in this definition.

No changes to this section have been proposed in the Article 10 substantial change rule, LSA Document #00-185.

Comment: 329 IAC 10-7.2-2(a)(2) and 329 IAC 10-7.2-2(a)(3) should be deleted. These subdivisions are redundant because they are included in 329 IAC 7.2-2(a)(1). (NSWMA)

Response: 329 IAC 10-7.2-2(a)(1) describes the acceptable sources of test methods to use to comply with this section. 329 IAC 10-7.2-2(a)(2) requires use of Chapter 1 of SW-846 for all test methods, even those from sources other than SW-846. Similarly, 329 IAC 10-7.2-2(a)(3) requires use of the statistical sampling methodology from Chapter 9 of SW-846 for all test methods, even those from sources other than SW-846. Removing these subdivisions would result in Chapters 1 and 9 of SW-846 being applicable only to test methods from SW-846. 329 IAC 10-7.2-2 has been rewritten to clarify that these requirements apply to all test methods used to identify chemicals in solid waste.

Comment: 329 IAC 10-8.2-4(a)(4)(C)(vi): What is “dedicated equipment”? A definition is needed. It is suggested that the whole second sentence be deleted. Also, suggest in the last sentence that “directed by the asbestos waste disposal manager” be deleted and replaced with “in accordance with the facility written asbestos contingency plan”. (NSWMA)

Response: These requirements originally appeared in the rules for special waste (329 IAC 10-8-4), effective April 13, 1996. They were added to ensure that a landfill would have the ability to clean up an uncontrolled release of asbestos-containing material by having a stock of equipment and supplies that is available when it is needed, as well as a trained supervisor who can ensure that the release is cleaned up without endangering human health.

The equipment and supplies required to clean up a spill of asbestos-containing material is established by 29 CFR 1926.1101, 29 CFR 1910.120 and the landfill's contingency plan. The requirement for equipment and supplies to be dedicated ensures that sufficient equipment and supplies will be available when needed to respond to a release of asbestos-containing material. Common sense would suggest that a landfill would not need to own a separate backhoe or endloader, or other similar costly equipment, just to clean up an asbestos spill, if the landfill operator can immediately make the equipment available to clean up a spill. Common sense would also suggest that supplies such as disposal drums, tape, wetting agents and personal protective equipment that are difficult to obtain on short notice should be stockpiled and not used for other purposes. The landfill's contingency plan must document adequate amounts and sources of equipment and supplies to response to spills of asbestos-containing materials. Because landfills that accept asbestos-containing material need to be able to clean up spills and secure improperly packaged material, we are not proposing to eliminate the requirement for dedicated equipment and supplies. Because the dictionary definitions provide an adequate explanation of this term, we do not intend to propose a new definition for this term.

IDEM considers a trained asbestos waste disposal manager essential to conducting cleanup of an uncontrolled release of asbestos without endangering human health. Requirements for asbestos waste disposal manager training and certification are found in 326 IAC 18. The requirement for an asbestos waste disposal manager is consistent with the rules for asbestos removal in 326 IAC 14-10. The commentor's suggestion to remove the trained manager and permit cleanups to be performed with untrained personnel would endanger human health and is inconsistent with other rules for management of asbestos-containing material. The commentor has provided no justification for removing this important provision and we are not proposing to do so in this rule.

Comment: In 329 IAC 10-9-2 (a), the designation for "(a)" is not present. The listing of solid wastes for MSWLF acceptance is not complete. Petroleum contaminated soils and pollution control wastes are omitted. It is suggested for clarity and completeness that this section be deleted and the original language "all solid waste regulated under this article except" be retained. Again for clarity, it is recommended that IDEM list those wastes that are not acceptable. Suggested listing:

- (1) Infectious waste;
- (2) Regulated hazardous waste;
- (3) PCB waste with concentration >50 ppm;
- (4) Old section (b)(2); and
- (5) Old section (b)(1).

This would eliminate the need for IDEM to list out in every new permit or amend every existing permit to identify all prohibited wastes when rule becomes effective. (NSWMA)

Response: IDEM concurs. This section now includes a comprehensive list of wastes that may and may not be accepted by a municipal solid waste landfill.

Comment: In 329 IAC 10-20-14.1(c)(3), dust is already addressed in 329 IAC 10-8.2-2. It is suggested that this criteria be deleted or change to read "The material must not create a violation of

329 IAC 10-8.2-2." (NSWMA) 329 IAC 10-20-14.1(c)(5) is not required and is burdensome. Violations of fugitive dust issues are covered elsewhere. (NSWMA)

Response: 329 IAC 10-8.2-2 applies to "waste" and refers to violations of the fugitive dust rules in 326 IAC 6-4 and 326 IAC 6-5. 329 IAC 10-20-14.1 applies to materials used as alternative daily cover that are not considered wastes. 329 IAC 10-20-14.1(c)(3) was intended to ensure that an adequate thickness of alternative daily cover material is in place to cover the waste as required by 329 IAC 10-20-13 and 329 IAC 10-20-14. If the alternative daily cover material washes or blows away, then it does not meet the requirements of 329 IAC 10-20-14(b). We have removed proposed 329 IAC 10-20-14.1(c)(3) and substituted a more general statement in 329 IAC 10-20-14.1(c)(2) that states: "Use of the material must not result in . . . blowing dust."

329 IAC 10-20-14.1(c)(5) (now 329 IAC 10-20-14.1(c)(4)) is intended to provide an ascertainable standard that will allow a person to identify materials that might be susceptible to blowing away in conditions commonly experienced in Indiana, prior to their application.

Comment: This comment refers to 329 IAC 10-20-14.1(c)(9). The purpose of cover is already addressed in items (2) and (4) of this section. Secondly, cover application is addressed in 329 IAC 10-20. As written, the requirement is severely stringent and almost impossible to meet. When cover is applied, portions of solid waste has a tendency to become entangled and intermingled with cover material or the equipment even with six inches of soil resulting in small portion of waste sometimes visible and slightly protruding through the cover. The commentor suggests that this item be deleted. (NSWMA)

Response: This subdivision establishes a performance standard that is consistent with 329 IAC 10-20-13 and 329 IAC 10-20-14. Adding a standard for how much a material may fail to meet a particular performance standard would result in an unnecessarily complex rule that would be difficult to administer. Minor discrepancies in application of material are compliance issues unique to each facility and application.

Comment: As written, 329 IAC 10-20-14.1(c)(10) is not a performance standard and provides no clear guidance as to what criteria must be met. It is suggested for clarity that IDEM place a concentration level if a PCB criteria is to be included in this section. NSWMA would again suggest 25 ppm as the criteria for PCBs in waste for use as an ADC. (NSWMA)

Response: IDEM concurs. A number of materials containing PCB may safely be used as alternative daily cover, including:

- (1) Material containing PCB allowed under 40 CFR 761.62(d).
- (2) Materials containing less than fifty (50) parts per million PCB that:
 - (A) results from a source that contained less than fifty (50) parts per million PCB;
 - (B) would otherwise meet the definition of PCB bulk product waste in 40 CFR 761.3; and
 - (C) is listed in 40 CFR 761.62(b)(1).
- (3) Other material containing less than or equal to ten (10) parts per million PCB not as a result of dilution.

These materials have been added to the list of materials in 329 IAC 10-20-14.1(d) that may be used under an insignificant facility modification under 329 IAC 10-3-3(b). A new provision in 329 IAC 10-20-14.1(b) would prohibit use of any material containing PCB that is not listed in 329 IAC 10-20-

14.1(d).

Comment: For clarity, it is recommended that shredder fluff not be deleted from 329 IAC 10-20-14.1(e). (NSWMA)

Response: If the specific shredder fluff to be used meets the performance standards in 329 IAC 10-20-14.1(c), then use of the material may be proposed as an insignificant facility modification under 329 IAC 10-3-3(c), the same as currently provided for in the existing rules.

Comment: Is a collection container, as referred to in 329 IAC 11-2-19.5(a)(7), the same as a “collection container system” as defined in 329 IAC 10-2-31? (NSWMA)

Response: This language was proposed by the commentor and refers to an individual collection container placed at a processing facility. This is not a “collection container system” as defined in 329 IAC 11-2-6 and regulated under 329 IAC 12-4. Since this new provision for insignificant facility modifications applies only to solid waste processing facilities, the definition of collection container system at 329 IAC 10-2-31 is not relevant.

Comment: The definition of solid waste in 329 IAC 11-2-39 is not consistent with 329 IAC 10-2-174. For clarity and to minimize confusion these definitions should be the same. (NSWMA)

Response: 329 IAC 11-2-39 is an existing definition. As currently written, it conflicts with the statutory definition of “solid waste” at IC 13-11-2-205. Such conflicts are grounds for disapproval of the rule. We have also been advised by the Attorney General to delete regulatory definitions of terms that are defined in statutes. However, because these definitions of “solid waste” contain amplifying information, we have kept that information and have rewritten 329 IAC 10-2-174 to be consistent with IC 13-11-2-205 and we have rewritten 329 IAC 11-2-39 to refer to 329 IAC 10-2-174.

Comment: For consistency and clarity, 329 IAC 11-8-2.5 should be consistent with 329 IAC 10-9-2. (NSWMA)

Response: IDEM concurs. The same list now appears in both sections.

Comment: Many facilities in Indiana ship non-hazardous solid wastes out of state for disposal. These facilities comply with the standards of the receiving state for notification, testing, and other requirements. It does not make sense to subject these shipments to dual regulations that may conflict. Indiana's current solid waste rules recognize this overlap. For example, under 329 IAC 10-7.1-3(a), a waste determination “must be carried out for all solid waste except waste “that is disposed of outside of Indiana.” The language in IDEM's July 1, 2002, proposals would eliminate the current exclusions for wastes disposed out of state. IDEM's discussion of its proposal and its response to comments give no indication that the agency intended a substantive change in the regulatory requirements that apply to waste disposed out of state, or even that the agency was aware of the

issue.

IDEM proposes to add a new Rule 7.2 on “Generator Responsibilities for Waste Identification.” To be consistent with the current rules, the following language should be added:

329 IAC 10-7.2-1 Generator Responsibilities

* * * * *

(c) This rule does not apply to industrial waste that is disposed of in a solid waste land disposal facility in another state if the generator complies with the waste identification requirements of federal law and of the receiving state.

It does not appear that other sections of the proposed rule would impose new requirements for wastes to be disposed out of state. It would be helpful for IDEM to confirm this point in its response to comments. (BSC)

Response: The provision in 329 IAC 10-7.1-3(a)(4) was added in the special waste rule which dealt with disposal. 329 IAC 10-7.2-1 refers to waste generation. Even though disposal may occur outside of Indiana, a number of activities subsequent to generation will occur in Indiana, such as storage, handling, transportation, transfer into or out of containers, consolidation, treatment, compaction, and other activities. Each activity requires the generator to understand the hazards associated with the waste to be able to conduct the activity safely. The waste identification requirement ensures that the generator has enough information to make appropriate choices about each waste’s management, storage and disposition, in addition to disposal.

Comment: The proposed rule requires every generator of solid waste to do testing over and above that necessary for making a hazardous waste determination. It is incumbent upon IDEM to demonstrate why such additional testing is necessary. U.S. EPA regulations include provisions requiring generators to determine whether their wastes are hazardous or non-hazardous. IDEM has proposed a new section 329 IAC 10-7.2-1 (“Generator Responsibilities for Waste Identification”) with broad language that differs significantly from the federal requirements. We recommend that this section be revised to provide a straight incorporation of the federal regulations. It is important to note that IC 13-20-7.5(2) provided until recently that generators were required to follow only the federal requirements for waste identification. This section was repealed by P.L. 218-2001 (HEA 1830-2001 session), but this repeal was to remove references to “special waste” from the Indiana Code and was non-substantive. We believe the legislature’s intent continues to be for Indiana to follow the federal requirements for waste determinations. We are especially concerned that IDEM has not identified the practical differences between the federal requirements and the broad language in the current proposal. (ICC)

Response: Any activity that requires an agency decision may require additional waste specific and site specific information, beyond that required to make a hazardous waste determination under 40 CFR 262.11. The following are some examples of agency decisions that would require us to request additional information:

- Solid waste surface impoundment closures.
- Legitimate reuse requests.
- Disposal of cement kiln dust that is not regulated under the rules for boilers and industrial furnaces.
- Solid waste cleanup issues.

- Open dumping issues.
- Management of solid waste on-site in contact with the land.

Action levels will depend on the activity itself, the location, and any other site-specific issues and will often reflect either established levels from the risk integrated system of closure (RISC) or restricted waste type criteria.

Comment: The proposal would introduce or leave in place several regulatory inconsistencies. These include definitions of “ground water” and “potable ground water source” that differ from the corresponding definitions adopted by the Water Pollution Control Board. It brings needless complexity and potential conflict into the regulations for different boards to be using different definitions of these common terms. (ICC)

Response: The definition of “ground water” at 329 IAC 10-2-85 is derived from the definition of “waters” at IC 13-11-2-265, which includes underground waters. 329 IAC 10-2-85 is identical to definitions of “ground water” in the rules of the water pollution control board at 327 IAC 2-1-9(18) and 327 IAC 2-1.5-2(44) (Water Quality Standards).

In contrast, in other rules of the water pollution control board at 327 IAC 2-11-3(7) (Ground Water Quality Standards), and 327 IAC 6.1-2-25 (Land Application of Biosolid, Industrial Waste Product, and Pollutant-Bearing Water), the definition of “ground water” is similar to that found in the federal Comprehensive Environmental Response, Cleanup, and Liability Act (CERCLA)(42 U.S.C. 9601(12)).

“Potable ground water source” defines a specific type of aquifer for purposes of determining an aquifer of significance and does not appear in rules of the water pollution control board.

Because it is unclear from the comment what specific action is recommended, and because these terms are derived from different authorities for different purposes, IDEM is not proposing any changes to these definitions.

Comment: The current rules contain a definition of “storage” of solid waste that appears to be more restrictive than the corresponding statutory definition of storage for hazardous waste. In the context of solid waste, the definition declares a “rebuttable presumption” that storage is limited to “six months.” By contract, the statutory definition of storage of hazardous waste at IC 13-11-2-223 refers explicitly to storage “for a period of years.” It does not make sense to apply a more restrictive definition to ordinary solid waste than to wastes that are legally “hazardous.” (ICC)

Response: The statutory definition of “storage” at IC 13-11-2-223(a) reads in full:
“(a) ‘Storage’, for purposes of environmental management laws and when used in conjunction with hazardous waste, means the containment of hazardous waste, either on a temporary basis or for a period of years, in a manner that does not constitute disposal of the hazardous waste.”

In addition to this definition, the hazardous waste management program defines storage as “the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.” [See 40 CFR 260.10, incorporated by reference at 329 IAC 3.1-4-1(a). This definition of storage does not apply to nonhazardous solid waste.] The hazardous waste rules at 329 IAC 3.1 also contain extensive requirements for storage of hazardous waste that are much more stringent than the provisions for storage in 329 IAC 10-2-181.

In contrast, the rules for solid waste in 329 IAC 10 contain minimal regulation of storage. The

definition at 329 IAC 10-2-181 contains only three (3) stipulations:

- (1) The retention, containment or accumulation of the solid waste must be temporary, that is, it must end at some point.
- (2) The storage must not threaten or potentially threaten human health or impact or potentially impact the environment.
- (3) If the storage continues for more than twenty-four (24) hours, it must not constitute disposal of the waste.

Rather than create extensive rules for solid waste storage similar to those found in 329 IAC 3.1, the board simply required that storage not threaten human health or the environment, in line with the prohibitions in 329 IAC 10-4-2 through 329 IAC 10-4-4. To ensure that storage is temporary, the board provided a maximum storage time of six (6) months, unless the owner of the waste can show that the waste is stored in a way that does not constitute disposal.

These provisions were included because “storage” of solid waste often results in one (1) of the following conditions:

- (1) The waste is stored on the ground, a practice that is considered by federal and state law to threaten human health or the environment by its very nature, since disposal of solid waste on the ground is open dumping. State law and the federal Resource Conservation and Recovery Act (RCRA) prohibit disposal of solid waste except in a solid waste land disposal facility.
- (2) The waste is “stored” for an indeterminate period of time, with no definite or predicted time for removal or proper disposal. Such “storage” meets the dictionary definition of “permanent.” Many entities file for bankruptcy before such “storage” ends, often forcing Indiana taxpayers to bear the cost of removal of the waste.

The current standards for storage of solid waste strike a reasonable balance between regulation and environmental protection and do not require amendment.